



The Comptroller General  
of the United States

Washington, D.C. 20548

*Jannicelli - PL*

## Decision

Matter of: Neal & Company, Inc.

File: B-228570.2

Date: January 5, 1988

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### DIGEST

1. Claims for bid preparation costs and the costs of filing and pursuing a protest are denied where there has been no finding that the protester was excluded unreasonably from the procurement.
2. Request for a conference is denied where having one would serve no useful purpose.

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### DECISION

Neal & Company, Inc., has requested reconsideration of our December 3, 1987, dismissal of its protest of an award made under invitation for bids (IFB) No. DACA85-87-B-0043, issued by the Army Corps of Engineers for the repair of a building at Fort Wainwright, Alaska. We dismissed Neal's protest as academic because the Corps determined that the IFB was defective and terminated the award. Neal contends that its protest should not have been dismissed, claiming that it is entitled to recover its bid preparation expenses and reasonable attorney's fees associated with filing and pursuing its protest. We deny the claim.

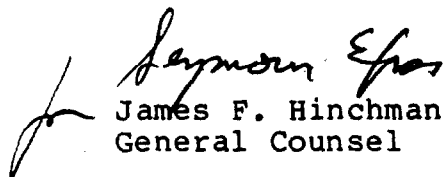
Neal's low-priced bid was rejected as nonresponsive because its combined price for two additive items exceeded a \$100,000 limitation for these items in the IFB. Award was made to the second-low bidder, Emerald Maintenance, Inc., whose combined price for the additive items was below the \$100,000 limitation. Neal contended that there was no statutory limitation pertaining to the work required by the additive items and that the IFB's \$100,000 ceiling merely reflected a budgetary decision made by the Corps. Neal argued that it should have received award based on its base bid and one of the additive items (which was below the stated dollar limitation) since its total price for the basic work and that additive item was lower than the second-low bidder's total price for the same work.

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The Corps reported to our Office that after the contract had been awarded it discovered that the quantity of asbestos specified in the IFB schedule was significantly less than the quantity that actually exists in the building to be repaired. As the existing site conditions were significantly different from those described in the IFB, the contracting officer determined that the contract should be terminated for the convenience of the government and that a new IFB accurately stating the asbestos quantity to be removed should be issued. Accordingly, the Corps terminated the contract with Emerald Maintenance.

Neal has not questioned either the agency's determination that the specifications were defective or its decision to cancel Emerald's contract and resolicit, but contends that it is entitled to bid preparation and protest costs. Under our Bid Protest Regulations, however, a finding of entitlement to costs must be preceded by a finding that the agency has unreasonably excluded the protester from the procurement. 4 C.F.R. § 21.6(e) (1987). Here, the Corps has determined that the IFB was defective in that it did not accurately describe the work required to be performed and was therefore an inadequate basis for award to any bidder. That determination has not been challenged. Since the IFB was defective, we cannot say that Neal was entitled to an award under it or that the protester was unreasonably excluded from the procurement. Thus, there is no basis for an award of costs. See Rotair Industries, Inc.--Reconsideration, B-226661.2, supra. We therefore deny Neal's claim for the costs of preparing its bid and filing its protest.

Neal also has requested a conference on its request for reconsideration and claim. No useful purpose would be served by conducting such a conference.

  
James F. Hinchman  
General Counsel